

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BLUEFIELD DIVISION**

**KELLY WAYNE CHRISTIAN,**

**Plaintiff,**

**v.**

**Civil Action No. 1:19-cv-00271**

**J.A. TUPPER,**

**Defendant.**

**ORDER**

Plaintiff, who is acting *pro se*, filed his letter-form Complaint on April 12, 2019. (ECF No. 2) By Order entered April 12, 2019 (ECF No. 3), this case was referred to the undersigned United States Magistrate Judge to consider the pleadings and evidence, and to submit proposed findings of fact and recommendations for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). On July 19, 2019, Defendant filed his Motion to Dismiss Plaintiff's Complaint. (ECF No. 12) In response to this Court's Roseboro notice (ECF No. 14) to file a response to Defendant's Motion, on July 26, 2019, Plaintiff filed a letter to the Court simply advising that he wishes for the case to proceed. (ECF No. 15) Subsequently, on July 29, 2019, Plaintiff filed another letter-form motion requesting voluntary dismissal of this case. (ECF No. 16) Accordingly, the undersigned issued an Order scheduling a hearing to determine whether Plaintiff intends to have this matter dismissed or to proceed. (ECF No. 17)

Therefore, on this day, Plaintiff, *pro se*, and counsel for Defendant, Drannon Adkins, Esq. both appeared for a telephone status conference. In response to the Court's inquiry as to whether he wishes his Complaint to be dismissed or not, Plaintiff unequivocally represented that he wishes

for this civil action to proceed. Finding that Plaintiff has verbally withdrawn his letter-motion for voluntary dismissal on the record, accordingly, the Court directs the Clerk to **TERMINATE** Plaintiff's letter-motion as **MOOT**. (ECF No. 16).

Based on the foregoing, the Court finds that it is now appropriate to enter a Scheduling Order regarding Plaintiff's claims. The parties shall comply with the following schedule:

1. Plaintiff shall advise the Court in writing no later than **August 30, 2019** if he has retained a lawyer or intends to proceed in this civil action *pro se*.
2. Plaintiff shall file an appropriate response to Defendant's Motion to Dismiss no later than **September 16, 2019**. As this Court noted in its earlier Roseboro notice (ECF No. 14), Plaintiff is reminded that his response is subject to the penalties of perjury and that in his response, Plaintiff shall set forth facts indicating the existence of genuine or actual dispute of fact for trial. Plaintiff must set out either in his own Affidavit or sworn statement or the Affidavits or sworn statements of other witnesses, specific facts which shown that Plaintiff and Defendant actually disagree about one or more important and material fact or facts presented by this case. Plaintiff should address as clearly as possible, the issues and facts stated in Defendant's Motion and Memorandum. Plaintiff is reminded to file his response with the Clerk of Court and to serve copies of his response to counsel for Defendant. Defendant shall have until **September 23, 2019** to file any reply.
3. Discovery: All discovery shall be completed by **November 15, 2019**.

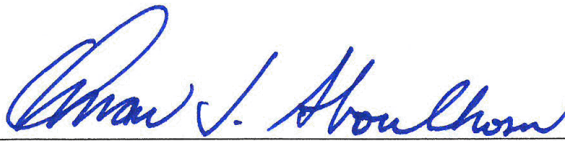
"Completed" means that all discovery, objections, motions to compel, and all other motions and replies relating to discovery in this action must be filed and/or noticed in time for the party objecting or responding to have opportunity under the Federal Rules of Civil Procedure and Local Rules to make responses. The term "all discovery" in the preceding definition includes Interrogatories, Depositions, and Admissions.

4. Dispositive Motions: Motions for Summary Judgment (Rule 56) shall be filed by **December 16, 2019**. Pursuant to the holding of Roseboro v. Garrison, 528 F.2d 309 (4<sup>th</sup> Cir. 1975), **PLAINTIFF IS WARNED THAT IF THE DEFENSE FILES A MOTION FOR SUMMARY JUDGMENT SUPPORTED BY ONE OR MORE AFFIDAVITS OR OTHER MATERIALS, PLAINTIFF HAS THE RIGHT AND A REASONABLE OPPORTUNITY OF ONE MONTH TO FILE COUNTER-AFFIDAVITS OR OTHER APPROPRIATE**

**MATERIALS. FAILURE TO RESPOND AND TO FILE AFFIDAVITS OR OTHER MATERIALS MIGHT RESULT IN ENTRY OF SUMMARY JUDGMENT AGAINST PLAINTIFF (PLAINTIFF WOULD LOSE THE CASE.)** Responses to dispositive motions shall be filed by **December 30, 2019**. Replies to dispositive motions shall be filed by **January 6, 2020**.

Accordingly, the Court The Clerk is directed to mail a copy of this Order to Plaintiff, who is acting *pro se*, and to counsel of record.

ENTER: August 15, 2019.

A handwritten signature in blue ink, reading "Omar J. Aboulhosen", written over a horizontal line.

Omar J. Aboulhosen  
United States Magistrate Judge